
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Joaquim Barbosa |) | File Number: EB-08-NY-034 |
| |) | |
| Licensee of Amateur Radio Station N2KBJ |) | NAL/Acct. No. 200832380005 |
| |) | |
| Elizabeth, NJ |) | FRN 0017458753 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 26, 2008

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Joaquim Barbosa (“Barbosa”), licensee of amateur radio station N2KBJ, in Elizabeth, New Jersey, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”)¹ by operating radio transmitting equipment on the frequency 296.550 MHz without Commission authorization. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Barbosa is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

II. BACKGROUND

2. On January 24, 2008, the Commission received a complaint that an authorized United States government user was receiving harmful interference from an unauthorized station operating on 296.550 MHz in the Elizabeth, New Jersey area. The harmful interference was obstructing and interfering with a government communications system.

3. On February 1, 2008, an agent from the FCC’s New York Office monitored 296.550 MHz using remote monitoring equipment in the New York area and observed radio transmissions on the frequency in the area of Elizabeth, New Jersey.

4. On February 5, 2008, using a mobile direction-finding vehicle, an agent observed transmissions on the frequency 296.550 MHz coming from the area of Elizabeth, New Jersey. The agent heard the transmissions while driving in Staten Island, approximately 3.5 miles away from the source of transmissions that would subsequently be determined. Using mobile direction-finding techniques, the agent determined that the source of the transmissions was coming from the vicinity of North Avenue and Jackson Avenue in Elizabeth, NJ.

5. On both February 6 and 7, 2008, agents again detected transmissions on the frequency

¹ U.S.C. § 301.

² 47 U.S.C. § 503(b).

296.550 MHz and, using mobile direction-finding techniques, determined that the source of the transmissions was a private residence at 921 Jackson Avenue, Elizabeth, NJ. On February 7, an agent confirmed with the complainant that those transmissions were audible on the government communications system. An agent subsequently checked the City of Elizabeth Tax Assessor's records and determined that the owner of the property at 921 Jackson Avenue is Joaquim Barbosa. The agents observed several antennas of the type used for amateur radio communications mounted on the house and on the property in back of the house. An agent later checked the FCC amateur database and determined that Barbosa holds an Amateur Extra Class license, call sign N2KBJ.

6. On February 11, 2008, agents again detected transmissions on the frequency 296.550 MHz and, using mobile direction-finding techniques, determined that the source of the transmissions was the residence at 921 Jackson Avenue. Immediately after determining the source of the transmissions, the agents conducted a radio station inspection with Barbosa at the Jackson Avenue residence. During the inspection, agents positively identified Barbosa from his driver's license. Barbosa also showed the agents his amateur radio license. During the inspection, the agents observed a transceiver whose display showed that it was set to the transmit frequency of 296.550 MHz. The agents measured the transmitter output power at 17 watts and an output frequency of 296.550 MHz. The agents observed that the transmitter was connected to an antenna mounted on the back of the house. Barbosa admitted to operating the station and the transmitting equipment observed during the inspection for the last four to six months, and stated that he owned the equipment. As a licensed amateur operator, Barbosa stated that he knew that the frequency 296.550 MHz was not an authorized U.S. amateur frequency and he knew that he did not have a license to operate on the frequency. The agents advised Barbosa of the violation for operation of the unlicensed station and informed him that his operation was causing harmful interference to a U.S. Government system. The agents issued a hand-delivered Notice of Unlicensed Operation to Barbosa which he signed as acknowledgement of receipt.

7. According to Commission records, Joaquim Barbosa, 921 Jackson Avenue, Elizabeth, New Jersey, 07201, was issued an Amateur Extra Class, amateur radio operator license, call sign N2KBJ, on August 31, 1998,³ which will expire on August 31, 2008. Pursuant to Section 97.103(a) of the Rules, licensed amateur radio operators are responsible for the proper operation of their stations in accordance with the Commission's Rules.⁴ Licensed amateur operators are authorized to operate on the frequencies listed Section 97.301 of the Rules, as designated by their operator class and license.⁵ In order to use designated frequencies in the amateur bands, amateur operators must follow the frequency sharing requirements in Section 97.301 of the Rules and the United States Table of Frequency Allocations found in Sections 2.105 and 2.106 of the Rules.⁶ Pursuant to the Table of Allocations, the 267-322 MHz Band is allocated solely for Federal Government use.⁷ In the band 255 – 328.6 MHz, the fixed and mobile services

³ In accordance with Part 97 of the Commission's Rules, operation of an amateur station requires an amateur operator license grant from the FCC. Before receiving a license grant, an applicant must pass an examination which contains one telegraphy (Morse Code) element and three written elements which establish the applicant's level of operational and technical ability in performing properly the duties of an amateur service licensee. The class for which each examinee is qualified is determined by the degree of skill and knowledge in operating a station that the examinee demonstrates at the examination. There are six classes of amateur operator licenses. The higher the license class, the more expertise the licensee must demonstrate and the greater the frequency privileges the amateur operator is authorized. In ascending order, the classes of amateur operator license grants are: Novice, Technician, Technician Plus, General, Advanced and Amateur Extra. *See 1998 Biennial Regulatory Review – Amendment of Part 97 of the Commission's Amateur Service Rules*, 13 FCC Rcd 15798 (1998).

⁴ 47 C.F.R. § 97.103(a).

⁵ 47 C.F.R. § 97.301.

⁶ *See* 47 C.F.R. § 97.303, citing Sections 2.105, 2.106 of the Rules.

⁷ *See* 47 C.F.R. § 2.106.

are limited to the military services.⁸ The use of the band 235 - 322 MHz is allocated on a primary basis to the mobile-satellite service, limited to military operations.⁹ Based on the agents' experience with the observed signal levels, transmitter power, antennas and the distance over which the signals were heard, the agents determined that the signals broadcast on February 5, 6, 7 and 11, 2008 exceeded the limits for operation under Part 15 of the Commission's Rules ("Rules") and therefore required a license.¹⁰ As a non-governmental entity, Barbosa is not eligible to receive a license to operate in the 267-322 MHz Band.

III. DISCUSSION

8. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.¹¹ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹²

9. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. In particular, Section 301 states that "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District; . . . except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter."¹³ FCC agents determined that, on February 6, 7 and 11, 2008, an unlicensed radio station operated on 296.550 MHz from Barbosa's residence in Elizabeth, New Jersey. During an inspection on February 11, 2008, Barbosa admitted to operating radio transmitting equipment on 296.550 MHz from his residence for the last four to six months. Barbosa also admitted to the agents that he knew he was operating on a frequency that was not authorized for use by amateur licensees. Based on the evidence before us, we find that Barbosa apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission apparatus without a license.

10. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization for the service is

⁸ 47 C.F.R. § 2.106, Federal Government Footnote G27.

⁹ 47 C.F.R. § 2.106, Federal Government Footnote G100.

¹⁰ Section 15.209 of the Rules provides that non-licensed broadcasting in the 216-960 MHz band is permitted only if the field strength of the transmission does not exceed 200 µV/m at three meters. 47 C.F.R. § 15.209. Devices compliant with Part 15 typically have a range of less than one mile and are certified for use by the FCC for power levels less than 0.5 Watts.

¹¹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹² Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

¹³ 47 U.S.C. § 301.

\$10,000.¹⁴ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁵ Based on the criteria in Section 503(b)(2)(D) of the Act, and the upward adjustment criteria in the Forfeiture Policy Statement, we find that an upward adjustment in the amount of \$10,000 is warranted.¹⁶ Because Barbosa holds an Amateur Extra Class license, which requires the highest level of technical knowledge and affords the licensee the most frequency privileges, we find that his apparent willful and repeated operation on an unauthorized frequency that caused harmful interference to a United States government communications system is particularly egregious. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Barbosa is apparently liable for a \$20,000 forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Joaquim Barbosa is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of Section 301 of the Act.¹⁷

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Joaquim Barbosa **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, New York, NY 10014 and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3)

¹⁴ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(4); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100 – 01.

¹⁷ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

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some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Joaquim Barbosa at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office
Northeast Region
Enforcement Bureau